IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

CRL.A.No. 934 of 2001(C)

CC.8/2000 of ENQUIRY COMMR. & SPL. JUDGE, THRISSUR

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APPELLANT: ACCUSED:

N.G.JOSEPH, S/O.GEORGE,
NEDUMPARAMPIL, ELAMKUNNAPPUZHA,
(AGRICULTURAL ASSISTANT, UNDER SUSPENSION
KRISHNA BHAVAN, NARAKKAL).

BY ADV. SRI.B.RAMAN PILLAI

RESPONDENTS: COMPLAINANT:

STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.MUHAMMED PUZHAKKARA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No.934 of 2001

Dated this the 30th March, 2007.

J U D G M E N T

The accused in C.C.No.8/2000, on the file of the Enquiry Commissioner & Special Judge, Thrissur, is the appellant. He was found guilty of the offence punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, in short 'the Act', and, therefore, convicted and sentenced him thereunder to undergo rigorous imprisonment for three years and also to pay a fine of Rs.25,000/=, in default, to undergo simple imprisonment for one year under the first count, and rigorous imprisonment for four years under the latter count. The substantive sentences were directed to run concurrently. The set off was also allowed. The same is under challenge through this appeal.

2. The prosecution case in brief is that the appellant was working as Agricultural Assistant under PW.4, an Agricultural Officer. Under the Nineth Five Year Plan of the nation, a People's Plan Scheme, had been evolved by the then Government to spray pesticides on the coconut trees, so as to prevent diseases being

affected on the trees. Rs.3/= each per tree was collected from the beneficiaries who own the coconut trees. An amount of Rs.9 paise 50 each per tree was allotted to the tree climber to spray the pesticides on the trees. Rs.1.50 was allotted for the purchase of pesticides. The entire funds of collection from the beneficiaries, purchase of pesticides and distribution to the coconut climber who spray the pesticides, were managed by the appellant and others, under the supervision of PW.4. The appellant was allotted Ward Nos. 1 to 5 of Njarakkal Panchayat, and PW.2 was identified to be the coconut climber to spray the pesticides. Another worker, DW.2, was employed to spray the pesticides in the coconut trees of Ward Nos.6 to 10. The entire work was to be completed before 31.3.1999. Though the commencement of the work was scheduled to begin from the first week of March, 1999, it started functioning only on 10.3.1999, when an inauguration was made. As the amount allotted to Ward Nos.1 to 10 of the Njarakkal Panchayat would lapse on 31.3.1999, cheques were drawn by PW.4, and issued to Pw.2 and DW.2, so that, they could continue with the work of spraying the pesticides, and complete the same.

3. The appellant alleged that Ext.P3(d) cheque for an amount of Rs.4,750/= was issued to PW.2 on 31.3.1999 for spraying the pesticides on 500 coconut trees, in the wards of the Panchayat on which the appellant had control. But PW.2, though received the amount, could complete the work only on 359 coconut trees. The cheque was issued in anticipation of the completion of the work on the remaining 141 trees. As PW.2 did not do the work, the appellant demanded the money from PW.2. On the failure of PW.2 to return the money, as per Ext.P3(d) cheque, or to complete the work, the appellant demanded money back, which resulted in wordly quarrel between both.

4. The prosecution has got a case that the appellant had demanded bribe of Re.1/= per tree for the spraying work, and on his demand, the appellant received Rs.200/= on 23.3.1999, and Rs.500/= on 29.3.1999. On receipt of Ext.P3(d) cheque, PW.2 was avoiding the appellant as he was demanding the amount as commission, which is bribe, and, therefore, he did not meet the appellant. However, he approached PW.6, the Deputy Superintendent of Vigilance and Anti Corruption Bureau, Ernakulam, and made Ext.P2 complaint, basing on which PW.6, Dy.S.P. had laid a trap.

5. M.O.1, one Rs.500/= currency note was chemically treated and entrusted under Ext.P4 Entrustment Mahazar at 9.30 a.m., on 7.4.1999, to PW.2. Accompanied by PW.3, PW.2 went to the office of the appellant and gave M.O.1 note. On receiving pre-determined signal from PW.2, PW.6 and others rushed into the office of the appellant, and recovered M.O.1 note under Ext.P5 recovery mahazar, attested by PW.3 and others. Various registers from the office of the appellant were also recovered. On completion of the investigation and obtaining Ext.P1 sanction order from PW.1, a final report was filed by PW.6, in V.C.No.6/99 of Vigilance and Anti Corruption Bureau, Ernakulam.

6. To prove the prosecution case, six witnesses were examined and 12 documents were marked, together with 8 material objects, which had been identified. The defence examined two witnesses and marked two documents. The court below, on appreciation of the evidence, found the accused guilty, and, therefore, convicted and sentenced him, as stated above.

7. The contention of the learned counsel appearing for the appellant, relying on Ext.D1, as well as the evidence of PW.4, is that the work was done by PW.2 without any prior payment. An advance was made to PW.2, and the said amounts were returned in the earlier occasions. They were not bribe as stated by the prosecution. Further, the counsel contented that M.O.1 entrusted at the time of the trap on 7.4.99 was the amount demanded, because of the incomplete work on 141 trees by PW.2, who promised to complete the work, within two days from the date of receipt of the cheque for Rs.4,750/=. Therefore, the counsel submitted that the case put forward by the prosecution do not establish that there was any demand or receipt of bribe, as required under Sections 7 & 13(2) of the Act. Hence, the conviction and sentence of the appellant are unsustainable.

8. The learned Public Prosecutor, on the other hand, submitted that the evidence of PW.2 may be accepted and the conviction and sentence may be sustained.

9. I have gone through the evidence of PW.2, the complainant, PW.4, the Agricultural Officer under whom the appellant was working, DW.1, the President of the Kera Samrakshana Samithi, and also DW.2, another worker, for the Ward Nos.6 to 10, who was spraying pesticides. Except the evidence of PW.2, there is no material before me to show that the appellant had received an amount of Rs.200/= on 23.3.1999, and Rs.500/= on 29.3.1999, as bribe. It is here the importance of Ext.D1 has to be considered. PW.2 admitted one of his signature in Ext.D1. Of course, he denied the second signature thereunder. There are two entries of Rs.500/= and Rs.520/= each. Even if one signature is admitted against which PW.2 received an amount of Rs.500/= from the appellant, which reveal that there was a transaction between PW.2 and the appellant and the latter having paid some amount to PW.2. In such circumstances, I am unable to accept the arguments of the prosecution regarding the payment of Rs.200/= and Rs.500/=, as stated above, towards bribe to the appellant by PW.2, in order to allow PW.2 to do the work of spraying of pesticides.

10. The specific case of the appellant is that PW.2 failed to do the incomplete work on 141 coconut trees. Therefore, money has been demanded by the appellant from PW.2. Except the

statement, there is nothing before me to show the demand of money by the appellant from PW.2. Of course, the evidence available clearly show that there was an altercation between the appellant and PW.2. While the latter maintained that the altercation was for the non-payment of bribe, as demanded by the appellant, the consistent stand of the appellant is that he challenged PW.2 for not doing the work on 141 trees. I find considerable support to the stand of the appellant from the evidence of DW.1. He deposed that PW.2 did not do the spraying work of 141 trees and PW.2 did the work only after 7.4.1999. Thus, in view of Ext.D1, and the admission of PW.2 that there was altercation between himself and the appellant, and also the evidence of DW.1, I cannot discard the evidence adduced against the prosecution case, that the payment of Rs.500/= through PW.2 on 7.4.99, as per the instruction of PW.6, was the bribe demanded by him. As discussed above, except the evidence of PW.2, there is no other corroborative circumstances. Even at the time of payment of M.O.1 currency note by PW.2 to the appellant, PW.3, the shadow witness was not present. Therefore, what transpired between the appellant and PW.2 is not corroborated by the prosecution. Hence, in the light of the evidence of

DW.1, PW.2 and the admission of PW.2, together with Ext.D1, I find that the prosecution case is not free from doubt. In such circumstances, I give the benefit of such doubt to the appellant.

11. In the light of the above discussions, and the evidence, I hold that the conviction and sentence passed by the trial court is not sustainable.

The appeal is thus allowed. The conviction and sentence passed on the appellant is set aside. The appellant is acquitted and set at liberty forthwith, cancelling his bail bond. The amount, if any, remitted by the appellant before the court below, as per the order of this Court, during the admission of this appeal, shall be returned to the appellant, by the court below, on the latter moving for the same.

J.M. JAMES,
JUDGE

nj.

J.M. JAMES, J.

Criminal Appeal No. 934 of 2001

J U D G M E N T

Dated: 30th March, 2007.